IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Crl.Rev.Pet.No. 1223 of 2005()

CRA.646/2003 of ADDL.SESSIONS COURT, (ADHOC), ERNAKULAM
CC.354/1999 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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REVN. PETITIONER: APPELLANT/ACCUSED

RAJENDRA PRASAD, 45 YEARS,
C.NO.3182, CENTRAL JAIL, VIYYOOR.

BY ADV. SRI.K.K.RAJEEV

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.r.P. No. 1223 of 2005

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Dated: 12-09-2007

ORDER

The revision petitioner who was accused in C.C. 354 of 1999 on the file of the J.F.C.M.-II, Aluva, for offences punishable under Sections 457, 461 and 380 I.P.C. challenge the conviction entered and the sentence passed against him by the courts below for the aforementioned offences.

2. The case of the prosecution can be summarised as follows:-

On 28-2-1998 at about 9 p.m. the accused committed house breaking into a residential building (Door No.32/1323(A)) belonging to P.W.1 and committed theft of two wrist watches, two pairs of earstuds and a pearl chain worth Rs. 3,250/-.

3. On the side of the prosecution 7 witnesses were examined as P.W.s 1 to 7 and 4 documents were marked as Ext.P1 to P4 and 4 material objects were marked as MOs 1 to 4.

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution and put to him by the trial Court. He did not adduce any defence

evidence.

5. The learned Magistrate , after trial, as per judgment dated 15-3-2003 found the revision petitioner guilty of the offences and sentenced him to rigorous imprisonment for three years under Sections 457 and 380 I.P.C. and rigorous imprisonment for two years under Sec. 461 I.P.C. The sentences were directed to be run concurrently. Even though the revision petitioner preferred an appeal before the Addl. Sessions Court (Adhoc-I), Ernakulam as Criminal Jail Appeal 646/2003 the said appeal was dismissed confirming the conviction but reducing the sentence to two years for each of the offences. Hence, this revision.

6. The learned counsel appearing for the revision petitioner assailed the conviction recorded and sentence passed against him. He mainly stressed the fact that there is a delay of 5 months in lodging the F.I.R. and that P.W.6 the jewellery owner did not support the prosecution case and therefore, the conviction entered and the sentence passed against the revision petitioner cannot be sustained.

7. It is true that the complaint was lodged by P.W.1 nearly 5 months after the occurrence. But courts cannot be

insensitive towards a person like P.W.1 who might have though that no useful purpose would be served by lodging a complaint before the police in all earnestness. The accused was arrested on 23-7-1998 resulting in his confession evidenced by Ext.P3 (a) leading to the recovery of stollen articles.

8. It is common knowledge that very often people may not choose to lodge a complaint before the police. This is mainly due to the reason that people who are otherwise busily engaged may not take the trouble of lodging a complaint and undergoing the harrowing experience of giving statements to the police and subsequently standing the ordeal of a trial. Hence, merely because P.W.1 did not lodge the complaint it does not mean that the properties were not stolen from his house. It is true that P.W.6 the jewellery owner turned hostile. It is also true that P.W.3 (Sivadas) who was the witness to the recovery also turned unfriendly to the prosecution. But then the recovery evidenced from Ext.P3 recovery mahazar contemporaneously prepared by P.W.5 the investigating officer has been proved through P.W.5. Courts are not unfamiliar with recovery witnesses turning hostile to the prosecution. But in the face of the credible testimony of P.W.5 there is no reason to suspect the

recovery effected by P.W.5 pursuant to Ext.P3 (a) confession statement by the accused.

9. No doubt, P.W.1 and his wife P.W.2 were not able to produce bills pertaining to the properties in question. It is well known that persons may not take the trouble of preserving bills when they purchase gold ornaments or other ornaments. Hence, merely because P.Ws 1 and 2 did not have in their possession the bills for purchase of the ornaments in question, it does not follow that their testimony is unworthy of credence. Even the Apex court has noticed the uncanny instinct of ladies to identify their personal belongings and ornaments notwithstanding the fact that ornaments of the same category may look alike. Hence, the disloyalty shown by P.Ws 4 and 6 cannot in any way affect the recovery effected by P.W.5. The trial court which had the unique advantage pf seeing the witnesses and assessing their credibility had chosen to believe the prosecution witnesses. The lower appellate court also considered the evidence in the right perspective. In the absence of any infirmity in the appreciation of evidence by the courts below, this court sitting in revision will be loathe to interfere with the conviction recorded by the courts below . The

conviction is accordingly confirmed.

10. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. The petitioner is not a first offender. He is involved in several other cases of similar nature. Hence rigorous imprisonment for a period of two years cannot be said to be disproportionate , harsh or excessive. Having regard to antecedents of the revision petitioner, I do not find any good ground to interfere with the sentence imposed against him.

In the result, this revision is dismissed.

V. RAMKUMAR,
(JUDGE)

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